

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

CASTURAL THOMPSON

PLAINTIFF

V.

Civil No. 03-5307

WAL-MART STORES, INC.

DEFENDANT

O R D E R

On this 25th day of October 2005, there comes on for consideration Defendant's Motion to Reconsider Award of Costs and Fees and Brief in Support (Docs. #75-76). While the Court fully considered these issues prior to imposing judgment in this case, the Court has re-examined them here and finds that Defendant's Motion should be and hereby is DENIED.

It is within the discretion of the trial judge to allow or disallow costs. *Brisco-Wade v. Carnahan*, 297 F.3d 781 (8th Cir. 2002). In an action pursuant to 42 U.S.C. § 1981, it is discretionary with the court whether to award a reasonable attorney's fee to a prevailing party. 42 U.S.C. § 1988(b).

This case was never considered to be frivolous by anyone, especially Wal-Mart. As evidenced by the affidavits and bill of costs attached to Defendant's Motion, several attorneys expended many hours in defending the claim. Wal-Mart is correct in that the Court found that the only direct testimony concerning any racial overtone was from Plaintiff that Mike Huffaker requested that Plaintiff handle all issues involving African-American employees. However, a fact-finder, based upon the circumstances, timing, and

actions of Wal-Mart executives, could well have concluded that the plaintiff was subject to racial discrimination.

The Court considered fees and costs in connection with its order of October 7, 2005, and now has expended time and effort in reconsidering its previous decision. The Court concludes that its previous decision is fair to both Wal-Mart and Plaintiff. Accordingly, the Court finds that Defendant's Motion should be and hereby is DENIED. IT IS SO ORDERED.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge